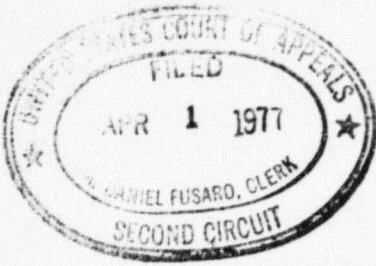


***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX



77-6032

United States Court of Appeals

FOR THE SECOND CIRCUIT

NO. 77-6032

GWENDOLYN D. KING and NELLIE AVERY,
Plaintiffs-Appellees

vs.

HOUSING AUTHORITY OF THE CITY OF HARTFORD,
Defendant-Appellant

and J. CHARLES MOKRISKI, individually and in his capacity as Chairman of the Board of Commissioners of the Housing Authority of the City of Hartford, LIONEL DE JESUS, individually and in his capacity as Vice-Chairman of the Board of Commissioners of the Housing Authority of the City of Hartford, REV. CYRIL C. BURKE, individually and in his capacity as Treasurer of the Board of Commissioners of the Housing Authority of the City of Hartford, ALBERT E. COTTER, individually and in his capacity as Assistant Treasurer of the Housing Authority of the City of Hartford, ARTHUR L. ALSTON, individually and in his capacity as Assistant Treasurer of the Housing Authority of the City of Hartford, DANIEL LYONS, individually and in his capacity as Executive Director of the Housing Authority of the City of Hartford, and CARLA HILLS, individually and in her capacity as Secretary of the U. S. Department of Housing and Urban Development,

Defendants

APPEAL FROM UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOINT APPENDIX

MORRIS APTER, Esq.
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101 PEARL STREET
HARTFORD, CONNECTICUT 06103
Attorneys for Appellant

PAGINATION AS IN ORIGINAL COPY

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* Inclusion designated by plaintiffs/appellees

IST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R 23	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
205/2	76 488	12 17 76	3	440	1		1	injunctive relief	0506 TEC		76 488

PLAINTIFFS

DEFENDANTS

KING, Gwendolyn D. and NELLIE AVERY
individually and on behalf of all
others similarly situated

HOUSING AUTHORITY OF THE CITY OF
HARTFORD, J. CHARLES MOKRISIK,
individually and in his capacity
as Chairman of the Board of
Commissioners of the Housing
Authority of the City of Hartford,
LIONEL DE JESUS, individually and
in his capacity as Vice-Chairman
of the Board of Commissioners of
the Housing Authority of the City
of Hartford, REV. CYRIL C. BURKE,
individually and in his capacity
as Treasurer of the Board of
Commissioners of the Housing Authority
of the City of Hartford, ALBERT E.
COTTER, individually and in his
capacity as Assistant Treasurer of
the Housing Authority of the City of
Hartford, ARTHUR L. ALSTON, individually

42 USC §1983 to enforce due process re
housing lease. seeks injunctive relief

ATTORNEYS

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Assistant United States Attorney
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1 True Copy
ATTEST:

STEPHEN A. MARGONERI
Clerk, U. S. District Court

Deputy Clerk

FILING FEES PAID

STATISTICAL CARDS

76-488

KING

VS HOUSING AUTHORITY OF CITY OF HARTFORD ET AL

DATE	NR.	PROCEEDINGS
12-17	1.	Applications for Leave to Proceed in Forma Pauperis filed.
	2	ORDER, granting application, So Ordered, Clarie, J. m 12/20-76,
	3	Motion to Appear Pro Hac Vice, (Atty Hugh Barber) So ordered, Clarie, J. m 12/20/
	4	Motion for Preliminary Injunction filed.
	5	Motion for T.R.O. filed and two affidavits
	6	Complaint filed.
	7	ORDER TO SHOW CAUSE, Clarie, J. m 12/20-76. (hearing on 12/27/76) Summons issued and together with same copies of complaint, motions and attested copies of OSC handed to Marshal for service.
12-22	8	Motion for Leave to serve subpoenas in forma pauperis filed by pltf
	9	Affidavit of Atty Barber.
	10	ORDER, TEC, m 12/22/76. Attested copies handed to Atty Barber.
12-27	11	Appearance of Morris Apter & Arnold Buchman entered for all defts.
"	12	Answer of Def Housing Authority of the City of Htf. et al (except the def. Carla Hills)
"	13	Cross Complaint of def. Housing Authority of the City of Htf against Def. Carla Hills Sec. of HUD.
12-27		HEARING on pltf. motion for preliminary injunction. Daniel Lyons pltf. witness sworn and testified. T. McQuade & Neil Freuden def. witnesses sworn and testified. Def. exhibits 1,2,3, & 4 filed. Within 48 hours, parties are to submit Proposed Findings of Fact conclusions of law and briefs.
12-28	14	Appearance of Susan Seel entered for the pltf.
12-29	15	Proposed Findings of Fact and Conclusions of Law.
12-29	16	Brief in Support of Plaintiffs' Motion for a Preliminary Injunction.
12-29	17	Findings of Fact and Conclusions of Law filed by Def. HUD.
12-29	18	Memorandum of Law of the Federal Defendant with Respect to Preliminary Injunction.
12-30	19	Defendant Housing Authority of the City of Hartford's Memorandum of Law.
12-30	20	Proposed Findings of Fact filed by Def. Housing Authority.
12-30	21	Motion to Determine Propriety of Class Action filed by Pltfs.
12-30	22	Memorandum in Support of Plaintiff's Motion to Determine Propriety of Class Action.
12-29	23	Marshal's return showing service of Civil Subpoena on B. Cameron.
12-28	24	Marshal's return showing service on Defs. Housing Authority, Mokriski, DeJesus, Burke, Cotter, Alston, and Lyons (12-17-76).
12-28	25	Marshal's return showing service on Def. Hills on 12-17-76.
1977		
1-8	26	Appearance of Frank H. Santoro entered for the def. HUD
"	27	AMENDMENT TO Cross Complaint of Def. Housing Authority of the City of Hartford Against def. Carla Hills Sec of HUD
"	28	Memorandum in Opposition to Plaintiffs' Motion for Class Action Certification
1-14	29	Ruling on Motion for Preliminary Injunction filed, Clarie, J. m 1-14-77. Copies to counsel of record. granted, order to be submitted in 10 days
2/9		Court Reporter's notes of proceedings held on December 27, 1976, filed in Hartford. (Sperber, R.)
2-10	30	ORDER, granting preliminary injunction TEC m 2-10-77. Copies mailed.
2-14	31	Notice of Appeal filed by def. Housing Authority of Hartford. (Re: order of 2/10/77) Copies of notice mailed to counsel of record. Attested copies of notice and docket entries mailed to U.S. Court of Appeals and New Haven. Civil Management Plan and Forms C & D mailed to Atty Apter. (\$250.00 certified check mailed to N. for deposit into the Registry

COMPLAINTPRELIMINARY STATEMENT

1. This class action is brought by tenants residing in federally assisted public housing projects for low income families controlled and operated by the Housing Authority of the City of Hartford. Plaintiffs, individually and on behalf of those they represent, seek to a) require defendant Housing Authority to adopt, publish and implement regulations issued by the Department of Housing and Urban Development regarding lease provisions and grievance procedures; b) to require defendant housing authority to adopt, publish and implement constitutional and statutory standards which will afford tenants living in public housing projects lease provisions and grievance procedures which comply with the Fourteenth Amendment to the U.S. Constitution; c) mandamus defendant Carla Hills, Secretary of HUD, to enforce such standards and regulations as required by the U.S. Constitution, the Housing Act of 1937, as amended, and implementing regulations thereunder.

2. The plaintiffs, individually and on behalf of those they represent, allege that defendants have violated, and continue to violate, rights secured to them by the due process clause of the Fourteenth Amendment to the U.S. Constitution; the Civil Rights Act of 1871, 42 U.S.C. §1983; and the Housing Act of 1937, as

amended, 42 U.S.C. §1401 et seq.

JURISDICTION

3. The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §1343(3) and (4), Title 28 U.S.C. §1331(a), and Title 28 U.S.C. §1361.

4. This is a civil action brought for injunctive and declaratory relief pursuant to Title 42 U.S.C. §1983, Title 28 U.S.C. §2201 et seq. and Rules 57 and 65 of the Federal Rules of Civil Procedure, this being an action to prevent the deprivation of rights, privileges and immunities secured to the plaintiff by the due process clause of the Fourteenth Amendment to the United States Constitution and Title 42 U.S.C. §1401 et seq. and regulations promulgated thereunder.

PARTIES

5. The plaintiff, Gwendolyn D. King, is a resident of Bellevue Square, a federally assisted public housing project for low income families operated by the defendant Housing Authority of the City of Hartford. She was a defendant in a State court action brought by the Hartford Housing Authority to evict her and recover possession of her apartment. The Hartford Housing Authority obtained a default judgment against her on November 10, 1976. The State court action was commenced without

any administrative notice to the plaintiff, Gwendolyn D. King.

6. The plaintiff, Nellie Avery, is a resident of Dutch Point Colony, a federally assisted public housing project for low income families operated by the defendant Housing Authority of the City of Hartford. She is a defendant in a State court action brought by the Hartford Housing Authority to evict her and recover possession of her apartment. The State court eviction action was commenced without any administrative notice to the plaintiff, Nellie Avery.

7. The defendant, Housing Authority of the City of Hartford (housing authority) is a body corporate and politic established by the Connecticut Legislature and the City of Hartford pursuant to Connecticut General Statutes, §8-40 et seq. and local resolution. The housing authority operates Bellevue Square, Dutch Point Colony and other housing projects for low income families pursuant to the laws of the State of Connecticut and the United States Housing Act, as amended, 42 U.S.C. §1401, et seq. and regulations promulgated thereunder by the U.S. Department of Housing and Urban Development (HUD) and pursuant to an annual contributions contract with HUD. The defendant housing authority receives federal funds from HUD.

8. The Defendants, J. Charles Mokrisik, Lionel De Jesus,

Reverend Cyril C. Burke, Albert E. Cotter and Arthur L. Alston are the duly appointed members of the Board of Commissioners of the Housing Authority of the City of Hartford in whom the powers of the Housing Authority are vested pursuant to State and federal law. The members of the Board of Commissioners are sued in their individual and official capacities.

9. Defendant Daniel Lyons is the duly appointed Executive Director of the Housing Authority of the City of Hartford who is charged with carrying out the administration of the policies promulgated by the Board of Commissioners of the Housing Authority. He is sued in his individual and official capacities.

10. The defendant Carla Hills, Secretary of the U.S. Department of Housing and Urban Development (HUD) is responsible for implementation of the Housing Act of 1937, as amended, 42 U.S.C. §1401 et seq. She is provided with rule-making powers to implement the Act. Her duties include contracting with local housing authorities for federal assistance to create and operate public housing projects for low income families. Her duties include ensuring that housing authorities which receive federal financial assistance pursuant to said Act comply with the statutory requirements and implementing regulations thereunder. She is sued in her official capacity.

CLASS ACTION ALLEGATIONS

11. The individual plaintiff, Gwendolyn D. King, is a resident of federally assisted public housing for low income families operated by the defendant housing authority. The plaintiff, Gwendolyn D. King, was a defendant in a State court action brought by the defendant housing authority to evict her from the premises. The defendant housing authority commenced, prosecuted and obtained a default judgment against Ms. King in said State court action without providing the plaintiff Gwendolyn D. King with written notice of their intention to terminate her tenancy, without providing her with the reasons for the termination without informing her of her right to reply, and without informing her of her right to a hearing.

12. The individual plaintiff, Nellie Avery, is a resident of federally assisted public housing for low income families operated by the defendant housing authority. The plaintiff Nellie Avery is a defendant in a State court action brought by the defendant housing authority to evict her from the premises. The defendant housing authority commenced the State court action without providing the plaintiff Nellie Avery with written notice of their intention to terminate her tenancy, without providing her with the reasons for the termination, without informing her

of her right to reply, and without informing her of her right to a hearing.

13. Plaintiffs Gwendolyn D. King and Nellie Avery represent the class of all past, present and future tenants in federally assisted public housing operated by the defendant housing authority who are entitled to the lease provisions and grievance procedures mandated by 24 C.F.R. §866.1 et seq.

14. The plaintiffs, Gwendolyn D. King and Nellie Avery rely on Rule 23(a) and (b) of the Federal Rules of Civil Procedure in suing as representatives of their class, in that joinder of all members would be impracticable, there are questions of law and fact common to the class, their claims as plaintiffs are typical of the claims of the class, and as representative parties they will fairly and adequately protect the interests of the class.

STATEMENT OF FACTS

15. The plaintiff, Gwendolyn D. King, presently resides in Bellevue Square, Hartford, Connecticut, in a dwelling unit in a housing project operated by the defendant Housing Authority of the City of Hartford under a federally assisted public housing program for low income families.

16. The plaintiff, Gwendolyn D. King, resides in said

9
project under a written lease with the defendant housing authority providing for automatic renewal of said lease for successive terms of one month each.

17. The plaintiff, Nellie Avery, presently resides at 43-D Dutch Point Colony, Hartford, Connecticut in a dwelling unit in a housing project operated by the defendant Housing Authority of the City of Hartford under a federally assisted public housing program for low income families.

18. The plaintiff, Nellie Avery, resides at said project under a written lease with the defendant Housing Authority providing for automatic renewal of said lease for successive terms of one month each.

19. A principal source of federal financial assistance to defendant Housing Authority is the United States Department of Housing and Urban Development (HUD) pursuant to the policies set forth in the United States Housing Act, as amended, Title 42 U.S.C. §1401, et seq. and regulations issued pursuant thereto.

20. The United States Housing Act, as amended, provides for a comprehensive scheme of contracting with local housing authorities for federal assistance to carry out the purpose of providing safe, decent and sanitary housing to families of low income.

21. The terms and conditions relating to the receipt of federal assistance are embodied in an annual contribution contract between the Housing Authority and HUD.

22. In addition to the provisions of the annual contributions contract, the Secretary of the Department of Housing and Urban Development pursuant to her rule making power has issued regulations for local housing authorities which supplement the provisions of the annual contributions contract.

23. From time to time the past and present Secretaries of HUD, pursuant to their rule making powers, have issued circulars and regulations mandating that local housing authorities implement certain provisions in their leases with tenants and certain grievance procedures.

24. Such lease provisions and grievance procedures have been mandated by the Secretary of HUD to specify minimum due process rights for public housing tenants when the local housing authority determines to terminate leases.

25. The right of the Secretary of HUD to require local housing authorities to use written leases incorporating certain minimum obligations of the parties and certain grievance procedures has been upheld in federal court even in cases in which HUD did not comply with the notice provisions of the Administrative

Procedure Act.

26. The most recent regulations issued by the Secretary of HUD concerning ~~leases~~ and grievance procedures between local housing authorities and their low income tenants were promulgated on August 7, 1975 and published in 40 Federal Register 33402 et seq. that day.

27. The regulations concerning lease provisions issued by the Secretary of HUD on August 7, 1975 are now set forth at 24 C.F.R. §866.1 et seq.

28. The regulations concerning grievance procedures issued by the Secretary of HUD on August 7, 1975 are now set forth at 24 C.F.R. §866.50 et seq.

29. The time for implementation of said regulations concerning lease provisions by local housing authorities is established at 24 C.F.R. §866.2 which provides in relevant part that "(t)he provisions of this subpart shall be adopted by each PHA within six months from the effective date of these regulations, that is, by February 7, 1976.

30. Said regulations concerning leases issued by the Secretary of HUD include specific procedures that local housing authorities must follow concerning termination of a tenant's lease.

31. Said regulations provide in relevant part at 24 C.F.R. §866.4(1) "that the PHA shall give written notice of termination of the lease of...14 days in the case of failure to pay rent..."

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32. Said regulations provide in relevant part at 24 C.F.R. §866.4(1)(3) "(t)hat the notice of termination to the tenant shall state reasons for the termination, shall inform the tenant of his right to make such reply as he may wish and of his right to request a hearing in accordance with the PHA's grievance procedure.

33. The time for implementation of said federal regulation concerning grievance procedures by local housing authorities is established at 24 C.F.R. §866.52 which provides in relevant part that "(w)ithin ninety days of the effective date of this Subpart each PHA shall adopt a resolution affording each tenant an opportunity for a hearing on a grievance...(t)he regulations shall be made a part of all tenant leases." that is, by November 7, 1975.

34. The grievance procedure set up under said federal regulations provides as a first step at 24 C.F.R. §866.54 that an attempt be made to informally settle the grievance without a hearing.

35. Said federal regulations also provide at 24 C.F.R. §866.54 that following the informal attempt to settle the grievance the housing authority shall within a resonable time provide the tenant with a summary of the discussion providing "the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing under §866.55 may be obtained if the complainant is not satisfied."

36. In the event the grievance cannot be settled informally said federal regulations provide at 24 C.F.R. §866.56 for a hearing with the following protections:

"a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.

b) The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:

(1) The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records and regulations of the PHA that are relevant to the hearing. Any document not so made available after request therefor by the complainant may not be relied on by the PHA at the hearing;

(2) The right to be represented by counsel or other person chosen as his or her representative;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of his or her complaint, to contravert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses on whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

(d) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination by the hearing officer or hearing panel, Provided, that a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate proceeding.

(e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in

exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought as appropriate.

(g) The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript."

37. Said federal regulations specifically provide with respect to proposed eviction actions at 24 C.F.R. §866.58 that "(i) if a tenant has requested a hearing in accordance with §866.55 on a complaint involving a PHA notice of termination of the tenancy and the hearing officer or hearing panel upholds the PHA's action to terminate the tenancy, the PHA shall not commence an eviction action in a State or local court until it has served a notice to vacate on the tenant, and in no event shall the notice to vacate be issued prior to the decision of the hearing officer or the hearing panel having been mailed or delivered to the complainant..."

38. On November 10, 1976 the defendant housing authority obtained a default judgment against plaintiff Gwendolyn D. King in an eviction action brought in the Connecticut Court of Common Pleas, G. A. 14.

39. Prior to the issuance of the default judgment by the State court against the plaintiff Gwendolyn D. King, she did not receive written administrative notice concerning the defendant housing authority's intention to terminate her tenancy, stating the reasons for the termination of her tenancy, informing her of her right to make such reply as she may wish, and of her right to a hearing.

40. The defendant housing authority's action in commencing and prosecuting an eviction action against the plaintiff Gwendolyn D. King without providing said administrative pretermination notice is in violation of her rights under Title 42 U.S.C. §1401 et seq. and the regulations promulgated thereunder set forth at 24 C.F.R. §866.1 et seq.

41. There is an eviction action brought by the defendant housing authority for nonpayment of rent against the plaintiff, Nellie Avery, pending in the Connecticut Court of Common Pleas, G.A. 14 (CV14-7611-93409).

42. The plaintiff Nellie Avery first learned of the pending eviction action in State court when a Notice to Quit possession was caused to be served on her by the defendant housing authority on or about November 17, 1976.

43. Said notice to quit stated that the plaintiff, Nellie Avery, was to quit possession of the premises at 43D Dutch Point Colony on or before November 23, 1976.

44. Under §52-532 of the Connecticut General Statutes
◇ a notice to quit possession of the premises upon a tenant is the first step a landlord takes in order to evict a tenant.

45. Under §52-532 of the Connecticut General Statutes if a tenant has not vacated the premises by the time set forth in the notice to quit possession of the premises, a commissioner of the Superior Court may issue a writ, summons and complaint, which shall set forth facts justifying a judgment for immediate possession of the premises and make a claim for possession of the premises.

46. The plaintiff, Nellie Avery, did not vacate the premises on or before November 23, 1976.

47. The plaintiff, Nellie Avery, then received a writ, summons and complaint issued by counsel to defendant housing authority informing her that if she was to defend the pending eviction action that she must file an appearance in Connecticut Court of Common Pleas, G.A. 14, on December 3, 1976 or the third day following.

48. Prior to the service of the notice to quit possession and the writ, summons and complaint the plaintiff Nellie Avery did not receive written administrative notice concerning the defendant housing authority's intention to terminate her tenancy,
◇ stating the reasons for the termination of her tenancy, informing her of her right to make such reply as she may wish, and of her right to a hearing.

49. The defendant housing authority's action in commencing an eviction action against the plaintiff Nellie Avery without providing said administrative pretermination notice is in violation of her rights under Title 42 U.S.C. §1401 et seq. and the regulations promulgated thereunder set forth at 24 C.F.R. §866.1 et seq.

50. Although the defendant housing authority was required to adopt the lease provisions described, *supra*, by February 7, 1976, and defendant housing authority has not adopted said required lease provisions, the defendant Secretary of the Department of Housing and Urban Development, has not enforced the regulations set forth at 24 C.F.R. §866.1 et seq. against the defendant Housing Authority of the City of Hartford.

51. Although the defendant housing authority was required to adopt the grievance procedures described, *supra*, by November 7, 1975, and defendant housing authority has not adopted said required grievance procedures, the Defendant Secretary of Housing and Urban Development has not enforced the regulations set forth at 24 C.F.R. §866.1 et seq. against the Defendant Housing and Urban Development City of Hartford.

FIRST CAUSE OF ACTION

52. The defendant housing authority's commencement of prosecution and enforcement of eviction actions in State court to recover possession of the plaintiffs' premises is in violation

◇ of plaintiffs' rights under Title 42 U.S.C. §1401 et seq. and the regulations promulgated thereunder set forth at 24 C.F.R. §866.1 et seq. which require mandatory lease provisions because plaintiffs were not provided with a written notice fourteen days prior to termination of the lease which stated the reasons for the proposed termination of lease, informed plaintiffs of their right to make a reply, and informed plaintiffs of their right to a hearing.

SECOND CAUSE OF ACTION

53. The defendant housing authority's commencement, prosecution and enforcement of eviction actions in State court to recover possession of the plaintiffs' premises is in violation of the plaintiffs' rights is in violation of the plaintiffs' rights under Title 42 U.S.C. 1401 et seq. and the regulations promulgated thereunder set forth at 24 C.F.R. §866.50 et seq. because plaintiffs were not provided with an opportunity to informally settle the action without a hearing, plaintiffs did not receive notice from the defendant housing authority specifying the procedures by which a hearing may be obtained, and defendant housing authority did not inform plaintiffs of the nature of the hearing to which they were entitled; that is, that it is to ◇ be held before a hearing officer or hearing panel affording the basic safeguards of due process including:

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◇ " (1) The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records and regulations of the PHA that are relevant to the hearing. Any document not so made available after request therefor by the complainant may not be relied on by the PHA at the hearing:

(2) The right to be represented by counsel or other person chosen as his or her representative;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of his or her complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses on whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

◇ (d) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has

◇ waived his right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer or hearing panel, provided, that a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

(e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought,

◇ as appropriate.

(g) The complaint or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript."

THIRD CAUSE OF ACTION

54. The defendant housing authority's commencement, prosecution and enforcement of eviction actions in State court to recover possession of the plaintiffs' premises is in violation of the plaintiffs' rights under Title 42 U.S.C. §1401 et seq. and the regulations promulgated thereunder set forth at 24 C.F.R. §866.1 et seq. because defendant housing authority's lease with plaintiff tenants contains a standard provision, as pleaded in said State court eviction actions providing that "(i) in case of default in the payment of rent for a period of ten days after the same becomes due and payable, or if Defendant [tenant] fails to comply with any of the covenants therein contained on Defendant's part to be kept and fulfilled, the lease would automatically terminate and Plaintiff [housing authority] would be entitled to immediate possession of said premises without any previous demand or notice whatever..."

FOURTH CAUSE OF ACTION

55. The defendant housing authority's commencement, prosecution and enforcement of eviction actions in State court to recover possession of the plaintiffs' premises is in violation

◇ of the plaintiffs' rights under Title 42 U.S.C. §1401 et seq. and the regulations promulgated thereunder set forth at 24 C.F.R. §866.50 et seq. because defendant housing authority's lease with plaintiff tenants contains a standard provision, as pleaded in said State court eviction actions providing that "(i)n case of default in the payment of rent for a period of ten days after the same becomes due and payable, or if Defendant [tenant] fails to comply with any of the covenants therein contained on Defendant's part to be kept and fulfilled, the lease would automatically terminated and Plaintiff [housing authority] would be entitled to immediate possession of said premises without any previous demand or notice whatever..."

FIFTH CAUSE OF ACTION

56. The Defendant housing authority's commencement, prosecution and enforcement of eviction actions in State court to recover possession of the plaintiffs' premises deprives the plaintiffs of their right to due process of law in violation of the U.S. Constitution, Amendment XIV, because plaintiffs were not provided with administrative notice of the defendant housing authority's intention to terminate their tenancies, informing the plaintiffs of the reasons for the proposed termination, informing plaintiffs of their right to reply and informing plaintiffs of their right to a hearing.

◇ SIXTH CAUSE OF ACTION

57. The defendant housing authority's commencement, prosecution and enforcement of eviction actions in State court to recover possession of the plaintiffs' premises deprives the plaintiffs of their right to due process of law in violation of the U.S. Constitution, Amendment XIV, because plaintiffs did not receive notice from the defendant housing authority specifying the procedures by which a hearing may be obtained and defendant housing authority did not inform plaintiffs of the nature of the hearing to which they were entitled; that is, a hearing affording the basic safeguards of due process including:

1) timely and adequate notice detailing the reasons for the proposed termination;

2) an opportunity on the part of the tenant to confront and cross-examine adverse witnesses;

3) the right of a tenant to be represented by counsel, provided by him to delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination and generally to safeguard his interests;

4) a decision, based on the evidence adduced at the hearing in which the reasons for the decision and the evidence relied on

◇ are set forth; and

5) an impartial decision maker.

◇ SEVENTH CAUSE OF ACTION

58. The defendant housing authority's commencement, prosecution and enforcement of eviction actions in State court to recover possession of the plaintiffs' premises deprives the plaintiffs of their right to due process of law in violation of the U.S. Constitution, Amendment XIV, because defendant housing authority's lease with plaintiff tenants contains a standard provision, as pleaded in State court eviction actions providing that "(i)n case of default in the payment of rent for a period of ten days after the same becomes due and payable, or if Defendant [tenant] fails to comply with any of the covenants therein contained on Defendant's part to be kept and fulfilled, the lease would automatically terminate and Plaintiff [housing authority] would be entitled to immediate possession of said premises without any previous demand or notice whatever..."

EIGHTH CAUSE OF ACTION

59. The defendant housing authority's failure to provide plaintiffs with new leases which comply with the mandatory lease provisions required by HUD is in violation of the plaintiffs' rights under Title 24 U.S.C. §1401 et seq. and the regulations promulgated thereunder set forth at 24 C.F.R. §866.1 et seq.

◇

◇ NINTH CAUSE OF ACTION

60. The failure of the Defendant Secretary of HUD to enforce against the Defendant Housing Authority of the City of Hartford the regulations she has promulgated pursuant to 42 U.S.C. §1401 et seq. and set forth at 24 C.F.R. §866.1 et seq. requiring mandatory lease provisions including grievance procedures is in violation of her obligations under said federal law and said regulations.

TENTH CAUSE OF ACTION

61. The failure of the Defendant Secretary of HUD to enforce against the Defendant Housing Authority of the City of Hartford the regulations she has promulgated pursuant to 42 U.S.C. §1401 et seq. and set forth at 24 C.F.R. §866.50 et seq. requiring mandatory grievance hearing procedures for tenants in violation of her obligations under said federal law and said regulations.

ELEVENTH CAUSE OF ACTION

62. The action of the Defendant Secretary of HUD in permitting the Defendant Housing Authority of the City of Hartford to commence, prosecute and enforce eviction actions in State court to recover possession of the plaintiffs' premises under a lease which contains a standard provision as pleaded in State court

◇ eviction actions providing that "(i)n case of default in the payment of rent for a period of ten days after the same becomes

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due and payable, or if Defendant [tenant] fails to comply with any of the covenants therein contained on Defendant's part to be kept and fulfilled, the lease would automatically terminate and Plaintiff [housing authority] would be entitled to immediate possession of said premises without any previous demand or notice whatever..." is in violation of her obligations under 42 U.S.C. §1401 et seq. and the regulations she has promulgated concerning lease provisions set forth at 24 C.F.R. §866.1 et seq.

TWELFTH CAUSE OF ACTION

63. The action of the Defendant Secretary of HUD in permitting the Defendant Housing Authority of the City of Hartford to commence, prosecute and enforce eviction actions in State court to recover possession of the plaintiffs' premises under a lease which contains a standard provision as pleaded in State court eviction actions providing that "(i)n case of default in the payment of rent for a period of ten days after the same becomes due and payable, or if Defendant [tenant] fails to comply with any of the covenants therein contained on Defendant's part to be kept and fulfilled, the lease would automatically terminate and Plaintiff [housing authority] would be entitled to immediate possession of said premises without any previous demand or notice whatever..." is in violation of her obligations under 42 U.S.C. §1401 et seq. and the regulations she has promulgated concerning grievance hearing procedures set forth at 24 C.F.R. §866.50 et seq.

◇ THIRTEENTH CAUSE OF ACTION

64. The failure of the Defendant Secretary of HUD to enforce against the Defendant Housing Authority of the City of Hartford the regulations she has promulgated pursuant to 42 U.S.C. §1401 et seq. and set forth at 24 C.F.R. §866.1 et seq. requiring mandatory lease provisions including grievance procedures concerning termination of the plaintiffs' leases is in violation of her obligations to ensure that HUD funded housing authorities do not violate the plaintiffs' rights to due process of law in violation of the United States Constitution, Amendment XIV.

FOURTEENTH CAUSE OF ACTION

65. The failure of the Defendant Secretary of HUD to enforce against the Defendant Housing Authority of the City of Hartford the regulations she has promulgated pursuant to 42 U.S.C. §1401 et seq. set forth at 24 C.F.R. §866.50 et seq. requiring mandatory grievance hearing procedures is in violation of her obligations to ensure that HUD funded housing authorities do not violate the plaintiffs' right to due process of law in violation of the United States Constitution, Amendment XIV.

FIFTEENTH CAUSE OF ACTION

◇ 66. The action of the Defendant Secretary of HUD in permitting the Defendant Housing Authority of the City of Hartford to commence, prosecute and enforce eviction actions in State court to recover possession of the plaintiffs' premises under a lease which contains a standard provision as pleaded in State court

-28-

◇ eviction actions providing that "(i)n cases of default in the payment of rent for a period of ten days after the same becomes due and payable, or if Defendant [tenant] fails to comply with any of the covenants therein contained on Defendant's part to be kept and fulfilled, the lease would automatically terminate and Plaintiff [housing authority] would be entitled to immediate possession of said premises without any previous demand or notice whatever..." is in violation of her obligations to ensure that HUD funded housing authorities do not violate the plaintiffs' rights to due process of law in violation of the United States Constitution, Amendment XIV.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff pray that this Court.

1. Assume jurisdiction of this action.
2. Enter an order that this action may properly proceed as a class action pursuant to Rule 23(a) and 23(b) of the Federal Rules of Civil Procedure.

3. Enter a temporary restraining order, preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure:

- a) ◇ enjoining the defendant housing authority from commencing, prosecuting or enforcing any action in State court to evict plaintiffs or any member of the plaintiff class from

◇ federally assisted public housing projects for low-income families until the lease provisions in the federal regulations set forth at 24 C.F.R. §866.1 et seq. and the grievance procedures in the federal regulations set forth at 24 C.F.R. §866.50 et seq. are adopted, published and implemented by the defendant housing authority;

b) ordering and requiring the defendant housing authority to implement the lease provisions in the regulations set forth at 24 C.F.R. §866.1 et seq.;

c) ordering and requiring the defendant housing authority to implement the grievance procedures set forth at 24 C.F.R. §866.50 et seq.

4. Enter a declaratory judgment pursuant to Title 28 U.S.C. §2201 et seq. declaring that the defendant housing authority's termination of the plaintiffs' lease and leases of members of the plaintiff class without implementation of the grievance procedure provisions in accordance with the regulation at 24 C.F.R. §866.50 et seq.;

a) violates and is repugnant to the due process clause of the Fourteenth Amendment to the U.S. Constitution;

◇ b) violates and is not in conformity with the United States Housing Act, as amended, Title 42 U.S.C. §1401 et seq. and regulations promulgated thereunder set forth at 24 C.F.R. §866.1 et seq. and §866.50 et seq.

5. Enter a declaratory judgment pursuant to Title 28 U.S.C. §2201 et seq. declaring that the failure of the defendant Carla Hills, Secretary of the Department of Housing and Urban Development, to enforce the regulations set forth at 24 C.F.R. §866.1 et seq. concerning termination of tenancies and §866.50 et seq. against the defendant housing authority:

a) violates and is repugnant to the due process clause of the Fourteenth Amendment to the U.S. Constitution;

b) violates and is not in conformity with the United States Housing Act, as amended, Title 42 U.S.C. §1401 et seq. and regulations promulgated thereunder set forth at 24 C.F.R. §866.1 et seq. and §866.50 et seq.

6. Order Defendant Carla Hills, Secretary of HUD, to perform her duty to enforce the regulations at 24 C.F.R. §866.1 et seq. and §866.50 et seq. against defendant housing authority.

7. Retain jurisdiction of this action for all purposes including:

a) monitoring the compliance of the defendant housing authority with the orders of this court;

b) entry of such additional orders as the court deems necessary.

8. Grant the plaintiffs' attorneys fees and costs of this action.

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9. Grant the plaintiffs such additional relief as the court may deem just, proper and equitable.

RESPECTFULLY SUBMITTED,

Doreen E. Dennis

Doreen E. Dennis
Attorney For Plaintiffs
Neighborhood Legal Services, Inc.
161 Washington Street
Hartford, Connecticut 06106
Telephone: 278-6020

Of Counsel:

Bruce Mayor

Bruce Mayor
Hugh Barber, pro hac vice
Neighborhood Legal Services, Inc.
524 Albany Avenue
Hartford, Connecticut 06112
Telephone: 278-6850

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GWENDOLYN D. KING and NEILIE
AVERY, individually and on behalf of
all other persons similarly situated,

Plaintiffs

vs.

CIVIL ACTION No. H76-488

HOUSING AUTHORITY OF THE CITY OF
HARTFORD, J. CHARLES MOKRISKI,
individually and in his capacity as Chairman
of the Board of Commissioners of the
Housing Authority of the City of Hartford,
LIONEL DE JESUS, individually and in
his capacity as Vice-Chairman of the
Board of Commissioners of the Housing
Authority of the City of Hartford, REV.
CYRIL C. BURKE, individually and in his
capacity as Treasurer of the Board of
Commissioners of the Housing Authority
of the City of Hartford, ALBERT E.
COTTER, individually and in his capacity
as Assistant Treasurer of the Housing
Authority of the City of Hartford, ARTHUR
L. ALSTON, individually and in his capacity
as Assistant Treasurer of the Housing Authority
of the City of Hartford, DANIEL LYONS,
individually and in his capacity as Executive
Director of the Housing Authority of the City
of Hartford, and CARLA HILLS, individually
and in her capacity as Secretary of the
United States Department of Housing and
Urban Development,

Defendants

ANSWER OF DEFENDANTS HOUSING AUTHORITY
OF THE CITY OF HARTFORD ET AL (EXCEPT THE
DEFENDANT CARLA HILLS, INDIVIDUALLY AND IN
HER CAPACITY AS SECRETARY OF THE UNITED
STATES DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT)

ANSWER

1. The Defendants are without sufficient knowledge or information
with which to form a belief as to the allegations contained in paragraphs 1, 2,
3 and 4.

12. Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 are admitted.

13. The Defendants are without sufficient knowledge or information with which to form a belief as to the allegations contained in paragraph 25.

14. Paragraphs 26, 27 and 28 are admitted.

15. Paragraph 29 is admitted, except that the effective date of said regulations is February 22, 1976.

16. Paragraph 30 is admitted, except that Defendants deny that the Defendant Housing Authority of the City of Hartford must follow said regulations concerning termination of a tenant's lease.

17. Paragraphs 31, 32, 33, 34, 35, 36, 37 and 38 are admitted.

18. Paragraph 39 is admitted, except that the notice given to the Defendant Gwendolyn D. King referred to in paragraph 2 above stated that her tenancy was terminated because of her non-payment of rent.

19. Paragraph 40 is denied.

20. Paragraphs 41, 42, 43, 44, 45, 46, 47, and 48 are admitted.

21. Paragraph 49 is denied.

22. These Defendants deny that they were required to adopt the lease provisions as alleged in paragraph 50. The Defendants have no knowledge or information to form a belief as to the balance of the allegation.

23. Paragraph 51 does not relate to these Defendants.

24. Paragraphs 52, 53, 54, 55, 56, 57, 58 and 59 are denied.

25. Paragraphs 60, 61, 62, 63, 64, 65 and 66 do not relate to these Defendants.

2. Paragraph 5 is admitted, except that because of this Plaintiff's failure to pay her rent, notice as required by her lease and the laws of the State of Connecticut was given to the Plaintiff Gwendolyn D. King on October 14, 1976.

3. Paragraph 6 is admitted, except that because of this Plaintiff's failure to pay her rent, notice as required by her lease and the laws of the State of Connecticut was given to the Plaintiff Nellie Avery on November 17, 1976.

4. Paragraph 7 is admitted.

5. Paragraph 8 is admitted, except that the said Defendant Commissioners of the Housing Authority of the City of Hartford have no powers vested in them by Federal law and act under powers pursuant to State law.

6. Paragraph 9 is admitted.

7. Paragraph 10 does not relate to these Defendants.

8. Paragraph 11 is admitted, except that the notice referred to in paragraph 2 above given to the Defendant Gwendolyn D. King informed her that her lease was being terminated because of her non-payment of rent.

9. Paragraph 12 is admitted, except that the notice referred to in paragraph 3 above given to the Defendant Nellie Avery informed her that her lease was being terminated because of her non-payment of rent.

10. The Defendants deny that these Plaintiffs or others described in paragraph 13 are entitled to lease provisions and grievance procedures as alleged. The Defendants have no knowledge or information to form a belief as to the balance of the allegation.

11. The Defendants are without sufficient knowledge or information with which to form a belief as to the allegations contained in Paragraph 14.

The Defendants interpose the following defenses:

FIRST DEFENSE:

The regulations relied upon by Plaintiffs are inapplicable to the Housing Authority of the City of Hartford in that said regulations, as applied to terminations of lease because of non-payment of rent, impede the prompt payment and collection of rent and the prompt processing of evictions in such cases. Said regulations are, therefore, contrary to the intent of Congress and frustrate those congressional purposes which the regulations were promulgated to further.

SECOND DEFENSE:

At all times relevant hereto, the Housing Authority of the City of Hartford has formulated, implemented and by lease clause obligated itself to maintain procedures, in all cases other than those based upon non-payment of rent, for the giving of notice to tenants of an intent to terminate lease and for extra-judicial grievance proceedings.

THIRD DEFENSE:

The declaratory and injunctive relief sought by Plaintiff, if granted, would necessarily be applicable to all tenants of the Housing Authority of the City of Hartford, therefore making unnecessary and unwarranted the maintenance of this suit as a class action.

FOURTH DEFENSE:

The leases of these Plaintiffs and all other tenants of the Housing Authority of the City of Hartford provide that in all cases of lease termination based upon reasons other than non-payment, tenant be given prior notice of the Housing Authority of the City of Hartford's intention to terminate the lease, disclosure of the reasons therefor, opportunity to reply or explain,

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notice of tenant's right to have counsel, and notice of tenant's right to have the matter determined through a grievance procedure.

Dated at Hartford, Connecticut, this 27th day of December, 1976.

DEFENDANTS HOUSING AUTHORITY
OF THE CITY OF HARTFORD ET AL.
(EXCEPT CARLA HILLS, INDIVIDUAL-
LY AND IN HER CAPACITY AS
SECRETARY OF THE UNITED STATES
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT)

By _____

Morris Apter
Their Attorney
101 Pearl Street
Hartford, Connecticut 06103

Parties

2. The cross-complaining Defendant, Housing Authority of the City of Hartford (hereinafter HHA), is a body corporate and politic organized and existing under and pursuant to the laws of the State of Connecticut for the purpose, among others, of operating housing projects with the financial aid of the Federal government.

3. The Defendant Carla Hills, Secretary of the United States Department of Housing and Urban Development (hereinafter HUD) is responsible for implementation of the United States Housing Act of 1937, as amended, (42 USC §1437 et. seq.).

Complaint

4. HHA owns and operates low-income housing projects, so-called, in Hartford, Connecticut.

5. In accordance with the United States Housing Act of 1937, as amended, (42 USC §1437 et. seq.), HHA has entered into an annual contribution contract, so-called, providing for payments from HUD to HHA of principal and interest payable on obligations issued by HHA to finance the development of its low-income housing projects, and for payments from HUD to HHA of amounts for operating expenses so as to assure the low-income character of the projects and the achievement and maintenance of adequate operating services and reserve funds.

6. In so assisting local agencies such as HHA to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of low-income, it is the declared policy of the United States to vest in the local agencies such as HHA the maximum amount of responsibility in the administration of their housing programs.

7. In furtherance of her responsibility for implementation of the United States Housing Act of 1937, as amended, the Secretary of HUD, pursuant to Section 6 of the Act (42 USC §1437 d [c] [4] [B]) is empowered to prescribe regulations with respect to management practices for the Congressionally mandated purpose of "the establishment of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of non-payment of rent."

8. Ostensibly pursuant to Section 6 of the Act, the Secretary of HUD promulgated regulations requiring inclusion in leases between local authorities, such as HHA, and their tenants of various notice provisions and grievance procedures with respect to termination of lease, which regulations are found at 24 CFR §866.1 et. seq.

9. Among other provisions, these regulations direct inclusion of lease terms requiring that the local authority "shall give written notice of termination of the lease of: (i) 14 days in the case of failure to pay rent" and that all disputes concerning the obligations of the tenant or the local authority shall be resolved in accordance with specified grievance procedures to be maintained by the local authority.

10. Prior to the promulgation of these regulations, HHA had developed practices and procedures for the administration of its rent collection duties.

11. These practices and procedures are founded upon the prompt processing of evictions in the case of non-payment of rent and have resulted in the prompt payment and collection of rents from HHA tenants.

12. The imposition of these regulations on the practices and procedures of HHA as they relate to situations of non-payment of rent will

delay the payment and collection of rents and impede the processing of evictions.

13. In so doing, these regulations, if applied to HHA practices and procedures as they relate to situations of non-payment, will frustrate the intent and will of Congress, as expressed in Section 6 of the United States Housing Act of 1937, as amended (42 USC §1437(d) [c] [4] [B]).

WHEREFORE, HHA prays the court:

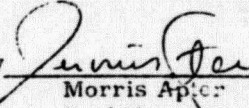
A. Pursuant to the provisions of 28 USC §§2201 and 2202, to enter a judgment declaring the provisions of 24 CFR §866.1 et. seq., as they relate to termination of tenant's non-payment of rent, to be inapplicable to HHA's annual contribution contract.

B. To order the Defendant Secretary of HUD to develop satisfactory procedures which will assure rather than frustrate the prompt payment and collection of rents and the prompt processing of evictions in the case of non-payment of rent.

C. To enter such other orders as in the premises may pertain.

DEFENDANT HOUSING AUTHORITY
OF THE CITY OF HARTFORD

By


Morris Apple
Its Attorney
101 Pearl Street
Hartford Connecticut 06103

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CLERK
U.S. DISTRICT COURT

GWENDOLYND. KING and NELLIE
AVERY, individually and on
behalf of all other persons
similarly situated

-VS-

Civil No. H-76-488

**RULING ON MOTION FOR
PRELIMINARY INJUNCTION**

The HUD regulations in question, issued in August of 1975, provide that leases between public housing authorities and their tenants must require that 14 days' notice be given before a lease can be terminated for nonpayment of rent. 24

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- 2 -

C.F.R. § 866.4(1)(2)(i). The notice given to the tenant must state the reasons for termination, and must inform the tenant of his right to reply, as well as to request a grievance hearing. Id. § 866.4(1)(3). The regulations further provide that public housing authorities must provide a grievance procedure, the regulations governing which must be included in the authority's leases. Id. § 866.52. Initial efforts must be made to settle a grievance by informal means. Id. § 866.54. If this fails, the tenant may take steps to obtain a review and hearing. Id. § 866.55 and 866.56. Eviction proceedings ^{not} may be initiated by the authority until notice to vacate has been served on the tenant, and "in no event shall the notice to vacate be issued prior to the decision of the hearing officer or the hearing panel having been mailed or delivered to the complainant." Id. § 866.58.

None of these procedures were followed in the cases of the named plaintiffs in this action. Instead, the HHA proceeded directly under Connecticut's statutory procedure for summary eviction. Conn. Gen. Stat. § 52-532. Under this law, a tenant must be given five days' notice to vacate for failure to pay rent, after which time a summons may be issued, returnable in six days, if the premises have not been vacated pursuant to the original notice.

The defendant HHA admits that the HUD regulations discussed above are generally applicable to its operations.

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Indeed, where leases are terminated for a cause other than nonpayment of rent, the HUD procedures are followed. As regards nonpayment cases, however, the HHA declines to follow federal regulations, arguing that they were not within the authority of HUD to promulgate. In the United States Housing Act, 42 U.S.C. § 1401 et seq., public housing authorities are directed to comply with

"such procedures and requirements as the Secretary [of HUD] may prescribe . . . pertaining to . . . the establishment of satisfactory procedures designed to assure the prompt payment and collection of rents and the prompt processing of evictions in the case of nonpayment of rent." 42 U.S.C. § 1437d(c)(4)(B).

The HHA argues that since its present procedure for evicting tenants is more expeditious than that mandated by HUD, it would contravene the expressed intention of Congress for the court to overturn its procedure. ^{1/} The HHA further argues that its ability to collect rents in a timely fashion would be unreasonably delayed and greatly impaired, if it were required to follow the HUD regulations.

The defendants have declined to consider additional sources of rulemaking authority upon which the contested HUD regulations are based. See, e.g., 42 U.S.C. § 1408; Thorpe v. Housing Authority of the City of Durham, 393 U.S. 268, 277 and n.28 (1969). Under its legislative mandate, HUD is

empowered to make rules and regulations in furtherance of the broad, remedial purposes of the Housing Act, as enunciated in 42 U.S.C. § 1401. The contested regulation is well within this boundary, and thus not beyond HUD's authorization. HUD guidelines highly similar to that presently in question have been upheld by several other courts on this basis. Thorpe v. Housing Authority of the City of Durham, 393 U.S. 268 (1969); Housing Authority of the City of Omaha, Nebraska v. United States Housing Authority, 468 F.2d 1 (8th Cir. 1972); Brown v. Housing Authority of the City of Milwaukee, 471 F.2d 63 (7th Cir. 1972).

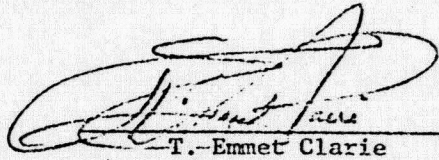
Were this not enough by itself, the trend of existing case law suggests quite clearly that eviction of a public housing tenant without a prior administrative hearing violates due process. Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir. 1970); Caulder v. Durham Housing Authority, 433 F.2d 998 (5th Cir. 1970); Owens v. Housing Authority of the City of Stamford, 394 F.Supp. 1267 (D. Conn. 1975) (Zampano, J.); cf. The Knox Sherrill Corp. v. Randall, 33 Conn. Supp. 15 (1976). While none of these cases is precisely on point, they unequivocally establish the proposition that public housing tenancy is a valuable property interest protected by the Constitution.

The preliminary injunction sought by the plaintiffs is

- 5 -

granted. The parties shall submit an appropriate order within ten (10) days. SO ORDERED.

Dated at Hartford, Connecticut, this 14th day of January, 1977.



T. Emmet Clarie
Chief Judge

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT FEB 11 12 25 PM '77

GWENDOLYN D. KING and NELLIE
AVERY, individually and on behalf
of all other persons similarly situated,

Plaintiffs

vs.

HOUSING AUTHORITY OF THE CITY
OF HARTFORD et al,

Defendants

U.S. DISTRICT COURT
HARTFORD, CONN.

69
CIVIL No. H-76-488

ORDER GRANTING PRELIMINARY INJUNCTION

This cause came on to be heard on December 27, 1976, on Plaintiffs' motion for a preliminary injunction, Plaintiffs having appeared by their counsel of record and Defendants having appeared by their counsel of record. The Court has considered said motion and Plaintiffs' verified complaint, and has considered Defendants' pleadings and the evidence introduced at the hearing of said motion by the parties hereto, and has filed a ruling on the Motion for Preliminary Injunction on January 14, 1977 and the Defendant Housing Authority of the City of Hartford having agreed that the following orders will be applied to all tenants in low-income housing projects so-called, it is hereby

ORDERED, that the Defendant Housing Authority of the City of Hartford, its commissioners, agents and employees be and they hereby are restrained and enjoined, pending the determination of this action, from

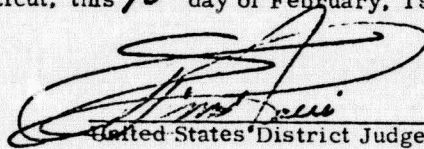
a) executing upon the summary process judgment obtained by the Housing Authority of the City of Hartford against the Plaintiff Gwendolyn D. King in the Connecticut Court of Common Pleas, G. A. 14, on November 10, 1976;

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b) proceeding further in the summary process action instituted by the Housing Authority of the City of Hartford against the Plaintiff Nellie Avery and presently pending in the Connecticut Court of Common Pleas, G.A. 14;

c) instituting summary process actions based upon nonpayment of rent against any tenant of HUD financed low-income housing projects owned by the Housing Authority of the City of Hartford without first giving such tenant fourteen days prior written notice of its intention to institute summary process proceedings for reason of nonpayment of rent and without first apprising such tenant of his or her right to proceed in accordance with the grievance procedures maintained by the Housing Authority of the City of Hartford as provided in the form letter attached hereto as Exhibit A.

Dated at Hartford, Connecticut, this 10th day of February, 1977.


United States District Judge

FILED
FEB 10 4 25 PM '77
U.S. DISTRICT COURT
HARTFORD, CONN.

EXHIBIT A

Tenant:

Date:

This is to notify you that unless your rent is paid in full within fourteen (14) days of the above date, your lease will be terminated and eviction action will be commenced.

If you wish to contest the claim of nonpayment of rent, you have the right to bond and/or request a hearing under the Authority's grievance procedure. If you request a hearing under the grievance procedure, you will be required to deposit all rent due to be due with the Authority which will hold it in an escrow account until your matter is resolved.

HOUSING AUTHORITY OF
THE CITY OF HARTFORD

(Mire al otro lado si habla
espanol)

Housing Authority of the City of Hartford

475 FLATBUSH AVENUE
HARTFORD, CONNECTICUT 06106

TERMINATION OF LEASE

Date November 17, 1976

To: Nellie Avery

The Housing Authority of the City of Hartford hereby terminates
your lease for dwelling unit No. 43-D

in the Dutch Point Colony Housing Project, Hartford, Connecticut,
and gives you notice to quit possession of said dwelling unit
on or before November 23, 1976, for the following reason:

Non-Payment of rent for the month of November, 1976 .
\$ 2.01 Electric
60.00
1.25

HOUSING AUTHORITY OF THE CITY OF HARTFORD

BY: Myrland D. Payne
Manager

(A Duplicate/Original Copy.)

City of Hartford, County of Hartford, this 17th
day of November, 1976.

Then I made due and legal service of the fore-
going notice by leaving a duplicate copy (with)
at the usual place of abode of the within named

Nellie Avery in said Town.

ATTEST:

Edward T. Brundage
Deputy Sheriff Constable
An Indifferent Person

DWELLING LEASE

Transfer
From

Lease No. 2379

Account No. 120 D. Point

1. DESCRIPTION OF THE PARTIES AND PREMISES:

The HOUSING AUTHORITY OF THE CITY OF HARTFORD, hereinafter called "Lessor", does hereby lease to

NELLIE AVERY
(Tenant)

the dwelling unit described below for the term beginning with the occupancy date and terminating at midnight

June 30, 1975

(last date of month following occupancy) under the terms and conditions stated herein. This Lease shall be binding upon the spouse if applicable and each member of the family although not signatory hereto. This Lease shall be automatically renewed for successive terms of one (1) month each at the rental as provided herein.

Address: 5x 43-D Dutch Point (5 rms.-3br.)

Occupancy Date: June 6, 1975 (pro-rata \$63.34)

2. AMOUNT AND DUE DATE OF RENTAL PAYMENTS:

The monthly rent of \$ 82.00 shall be due and payable on the first of each month, commencing on the first of the month following the date of occupancy. The rent will remain in effect unless adjusted in accordance with the provisions of Paragraph 5 hereof. Nonpayment of rent shall exist if the rent shall remain unpaid for a period of ten (10) days.

3. SECURITY DEPOSIT:

Tenant in low-rent project agrees to pay \$20.00 and in moderate rental project \$60.00 as security deposit to be used by Lessor at the termination of this Lease towards reimbursement of the cost of the repair of any damage caused by intentional or negligent conduct of the Tenant or persons occupying the unit and for any rent or other charges owed by Tenant at the time of vacating the unit. Payment of the security deposit in the case of low-rent projects is to be made by payment of \$10.00 upon occupancy and the balance of \$10.00 the following month; in the case of moderate rental projects, \$15.00 upon occupancy and the balance in three (3) equal successive monthly payments. Each installment of security deposit shall be paid together with and as a part of the rent and the failure to make payment of the security deposit shall be considered nonpayment of rent. Lessor shall return the security deposit to payor when Tenant vacates less any deductions for any of the costs indicated above. If such deductions are made, Lessor will give Tenant a written statement of any such costs or damages and/or other charges to be deducted from the security deposit. The security deposit may not be used to pay rent or other charges while Tenant occupies the unit.

4. UTILITIES:

Lessor will furnish water, including hot water, and heat without additional charge and other utilities for the unit will be supplied as set forth in Paragraphs a, c below:

- a. Gas by Lessor
- b. Gas by Tenant
- c. Electricity by Lessor
- d. Electricity by Tenant

Lessor will provide gas not in excess of 4290 cubic feet quarterly and Tenant will pay for excess according to prevailing rate.

Lessor will provide electricity not in excess of the following number of kilowatt hours as indicated:

January through March	1032	K.W.H.	July through September	841	K.W.H.
April through June	841	K.W.H.	October through December	1055	K.W.H.

Tenant will pay for excess according to prevailing rate. Excess utilities shall be due and payable in addition to and as part of the rent in the month following the determination of the amount due therefor, and failure to pay for excess utilities shall be considered nonpayment of rent. Lessor will not be responsible for failure to furnish utilities by reason of any cause beyond its control.

5. REDETERMINATION OF RENT, DWELLING SIZE AND ELIGIBILITY:

Once each year (once every two years if elderly tenant) as requested by Lessor, Tenant agrees to furnish accurate information to Lessor as to family income, employment and family composition for use by Lessor in determining whether the rental should be changed (applicable in low-rent housing only), whether the dwelling size is still appropriate for Tenant's need and whether Tenant continues to be eligible for public housing. This determination will be made in accordance with the approved schedule of rents (applicable in low-rent housing only) and statement of income and occupancy limits posted in each project office.

- a. (Applicable to low-rent projects only), rent as fixed in Paragraph 2 hereof or as adjusted pursuant to the above will remain in effect for the period between the regular rent redetermination unless:
 - (1) Tenant can show substantial change in his circumstances (such as a decline in income), which would justify a reduction in rent pursuant to the schedule of rents or such other circumstances as would create a hardship situation. Such change in circumstances must have existed for a period of a month or appear likely to continue for significant period in the future.
 - (2) Tenant commences to receive public assistance or his public assistance is terminated. Such a change must be reported to Lessor within ten (10) days of its occurrence.
 - (3) It is found that Tenant has misrepresented to Lessor the facts upon which his rent is based, so that the rent he is paying is less than he should have been charged. If this is found, then the increase in rent may be made retroactive.
 - (4) In the event of a rent adjustment pursuant to the above, Lessor will mail or deliver a "Notice of Rent Adjustment" to Tenant in accordance with Paragraph 9 hereof. In the case of rent decreases, the adjustment will become effective the first of the following month if Tenant gives notice by the 15th of the previous month. In case of rent increases, the adjustment will have effect as of the first of the second following month unless the rent increase results from a misrepresentation.
- b. (Applicable to moderate rental projects only), rent will be adjusted as approved by the Community Affairs Department of the State of Connecticut.
- c. If Lessor determines that the size of the dwelling unit is no longer appropriate to Tenant's needs, Lessor may notify Tenant in accordance with Paragraph 9 hereof, in which case Tenant will be required to execute a new lease as in the present form for another unit and to move to said unit within seven (7) days of receipt of notice.
- d. When Tenant's income has increased so that it is above the approved income limits for continued occupancy, Tenant shall vacate the unit unless Tenant is unable to find other suitable housing and has provided evidence to Lessor that a reasonable effort has been made to obtain same.

- 52
- (1) If Lessor determines that due to such circumstances Tenant will be unable to find other suitable housing and that the purposes of public housing will be best served by Tenant's continued possession, Tenant may remain in possession of the unit so long as the special circumstances exist, but the monthly rental shall be increased in accordance with the approved schedule of rents and surcharges. Lessor will notify Tenant of the rent adjustment in accordance with Paragraph 9 hereof. The adjustment will become effective the first of the second following month.
 - (2) If Lessor determines that Tenant can, with reasonable effort, find other suitable housing, it will notify Tenant that Tenant has at least two (2) months to find other housing and move according to Paragraph 9 hereof.

6. OCCUPANCY OF THE DWELLING UNIT:

Tenant agrees not to assign this Lease, or to sublet or transfer possession of the premises; nor to give accommodation to boarders or lodgers without the written consent of Lessor. Tenant further agrees not to use or permit the use of the dwelling unit for any purpose other than as a private dwelling unit solely for Tenant and his family and/or legal dependents. This provision does not exclude reasonable accommodation of Tenant's guests or visitors. Tenant agrees to abide by such necessary and reasonable regulations as may be promulgated by Lessor for the benefit and well being of the housing project and the tenants.

7. DAMAGE AND REPAIR:

Tenant shall use reasonable care to keep his dwelling unit in such condition as to prevent health or sanitation problems in the unit and in the project in which the unit is situated. Tenant shall notify Lessor promptly of known need for repairs to the leased unit and of known unsafe conditions in the common areas and grounds of the project which may lead to damage or injury. Except for normal wear and tear, Tenant agrees to pay reasonable charges for repair of intentional or negligent damage to the leased premises of the project caused by the Tenant and persons occupying the leased unit. Such charges shall be billed to the Tenant and shall specify the items of damage involved, the corrective action taken with respect to the damage and the cost thereof. Lessor shall seek separate legal remedy for the collection of said charges which may accrue to Lessor from Tenant. Tenant shall maintain the hallways and stairways in the building in which the leased unit is located in a sanitary condition and Lessor shall maintain said hallways and stairways in a decent and safe condition and the buildings and common areas and grounds in a decent, safe and sanitary condition in conformity with the requirements of local housing codes. Lessor shall make all necessary repairs and alterations to the dwelling unit with reasonable promptness at its own cost and expense, except as otherwise provided in this Paragraph. If the repairs of defects hazardous to life, health and safety, not occasioned by the intentional act or gross negligence of the Tenant, are not made within seventy-two (72) hours, excluding Sundays and holidays, of Tenant's reporting same to Lessor in writing, and if it was reasonable within Lessor's ability to make same, then Tenant shall pay rent in escrow to Lessor during the entire period of the existence of the defect. Defects for which Lessor is liable for repair shall be subject to per diem rent abatement. Rent shall not abate if Tenant rejects a reasonable alternative tenancy accommodation.

8. INSPECTIONS:

Before Tenant takes possession of the leased unit, Lessor shall inspect the same and give Tenant a written statement of the condition of the unit and of the equipment therein. Tenant and/or his representative may join in such inspection. After Tenant takes possession, the duly authorized agent, employee or representative of Lessor shall be permitted to enter the leased unit for the purpose of examining the conditions therein during reasonable hours only provided that Lessor has given advance notice to Tenant of the date and purpose of the entry. However, Lessor shall have the right to enter the leased unit without prior notice if Lessor reasonably believes that an emergency exists which requires such entry, or entry is at the request of the Tenant for service in the unit or exterminator service is being rendered within the leased unit. In the case of an emergency, Lessor shall promptly notify Tenant in writing of the date, time and purpose of such emergency entry. When Tenant vacates, Lessor will inspect the dwelling unit and give Tenant a written statement of the charges, if any, for which Tenant is responsible. Tenant and/or his representative may join in such inspection.

9. LEGAL NOTICES:

Any notice required hereunder, except when otherwise required by State law, will be sufficient if delivered in writing to Tenant personally, or to an adult member of his family residing in the dwelling unit, or to Tenant's abode or if sent by certified mail, return receipt requested, properly addressed to Tenant, postage prepaid. Notice to Lessor must be in writing, and either delivered at Lessor's office in the project within which Tenant resides or at the Central Office of the local Housing Authority, or sent to Lessor by certified mail, properly addressed, postage prepaid.

10. TERMINATION OF THE LEASE:

This Lease may be terminated by Tenant at any time by giving fifteen (15) days written notice in the manner specified in Paragraph 9. Tenant agrees to leave the dwelling unit in a clean and good condition, reasonable wear and tear excepted, and to return the keys to Lessor when he vacates. This Lease may be terminated by Lessor for nonpayment of rent in the manner prescribed by statute and for good cause only by giving the notice likewise prescribed by statute. Good cause shall consist of serious or repeated interference with the rights of other tenants, serious or repeated damage to the premises or creation of physical hazards in the leased premises or the project within which Tenant lives, over-income status, or failure to comply with said regulations promulgated by Lessor, referred to in Paragraph 6. Notice by either party to this Lease may be given on any day of the month. If Lessor should elect to terminate this Lease for reasons other than nonpayment of rent, Tenant must be told in a private conference, by a duly authorized representative of Lessor, the reason(s) for the eviction, and must be given an opportunity to make such reply or explanation as he may wish. Tenant may bring legal counsel or other representative of his choosing to such conference. At the time of the conference, Tenant must be informed of:

a. The specific reasons for the proposed eviction and the alleged facts upon which it is based; and

b. His right to request a hearing upon the proposed eviction in the manner provided in Paragraph 11 of this Lease. Lessor shall not actually evict or cause Tenant to be evicted from the leased premises until Tenant has exhausted his appeal process through the Grievance Procedure but in no event less than thirty (30) days from the date of the service of termination of lease; this Agreement shall survive any termination.

11. GRIEVANCE PROCEDURE:

All grievances or appeals arising under this Lease shall be processed and resolved pursuant to the grievance procedure which is in effect at the time such grievance or appeal arises, which procedure is posted in the Project Office and incorporated herein by reference.

12. CHANGES:

This Lease, together with any future adjustments of rent or dwelling unit evidences the entire agreement between Lessor and Tenant. No changes herein shall be made except in writing, signed and dated by both parties.

Date: June 12, 1975

jd

HOUSING AUTHORITY OF THE CITY OF HARTFORD

By

Maguel B. Zoyne

Manager
(Title)

x *Nelle Avery*
Tenant

Tenant

H. H. A.

INTEROFFICE MEMORANDUM

DATE December 2, 1975

TO: ALL MANAGERS AND APTER, NAHUM AND LENCE
 FROM: T. J. McQuade, Deputy Director and Comptroller
 SUBJECT: First Notices

The following schedule will govern for service of First Notices for the year 1976:

<u>MONTH</u>	<u>DATE OF NOTICE</u>	<u>TERMINATION DATE</u>
January	15	21
February	12	18
March	18	24
April	15	21
May	18	24
June	17	23
July	15	21
August	19	25
September	16	22
October	14	20
November	17	23
December	16	22

Since the above dates represent the last available date of service, the manager has no discretion to grant extensions.

Constables must be instructed that service is to be made on date of Notice after close of business. Failure to do so makes termination date ineffective. List of constables made available from Apter, Nahum and Lenge.

All Notices will be delivered to the office of our Attorney not later than 9:30 A.M., on the day following the last day listed above.

TJM:md

T. J. McQuade
 Deputy Director and Comptroller

1 Q How much money is collected each month from tenants
2 who have been terminated because of non-payment of rent?

3 A Very little. I have some statistics on the
4 collections for a year. For example, for the year 1975 --

5 Q No, Mr. McQuade. I think maybe you misunderstand
6 the question. I am talking now about tenants who have been
7 terminated for non-payment of rent. They are still in
8 residence, and have not been evicted. I'm talking about the
9 rent collection process that the Authority has at the present
10 time.

11 Are you able to tell how much money is collected
12 through that process per month?

13 A Approximately \$40,000.

14 THE COURT: Per month?

15 THE WITNESS: Per month.

16 BY MR. APTER:

17 Q And these are from defaulting tenants; that is,
18 tenants who have failed to pay the rent, and which some
19 eviction action has been brought to help the rent collection
20 process?

21 A Right.

22 Q Do you have any information as to the difficulty
23 or comparative difficulty in the collection of rents from a
24 tenant who is under eviction, with respect to the amount that
25 is owed?

1 A It is our experience that the more money that is
2 owed by the tenant, the less chance we have of collecting it.

3 Q What happens if a tenant is unable to pay and is
4 eventually evicted, or eventually moves? What happens with
5 the receivable that you have for rent?

6 A After a first effort by the Authority to collect,
7 the account is turned over to a collection agency.

8 Q Would you tell his Honor what your losses are at

9 the present time, your annual losses, charged to your profit
10 and loss, or charged to your operating statement, rather,
11 with respect to rents that are lost through move-outs or
12 evictions?

* * *

2 THE WITNESS: For the year 1975 we wrote off
3 to collection loss \$29,163.40.

4 We recovered from accounts previously written
5 off, \$3,307.44. Approximately 10 percent. Or 11.

6 For the eleven months of 1976 we have written
7 off \$33,773.17. We have recaptured \$5,018.77.

8 BY MR. APTER:

9 Q Assuming that the Authority follows the procedure
10 regulation by issuing a 14 day notice to a non-paying tenant,
11 assuming further that thereafter a notice to quit or
12 termination of lease is served, as prescribed by the statute,
13 to the same non-paying tenant, do you have an opinion as to
14 how this would affect the financial picture of the Authority?

15 A Yes, I do.

* * *

3 THE COURT: I think the answer is quite
4 obvious. In other words, the longer it goes, the
5 less likely it is that they will collect.

6 To give a specific figure, unless he is
7 drawing on some kind of graph that he has
8 projected over a period of months or years
9 concerning the same subject, without any basis or
10 foundation in fact.

11 BY MR. APTER:

12 Q Assume, Mr. McQuade, that the Authority gave the
13 14 day notice that we are talking about here, and followed
14 up with a notice to quit in a summary process action.
15 Whether or not you have looked at your figures and made some
16 calculations with respect to how much it would cost the
17 Authority in dollars and cents per year?

18 A Yes, I have.

19 Q And how much would it cost?

20 A Seventy-five to \$100,000 a year, additionally.

21 Q Would that include the cost of administering this
22 program?

23 A Yes.

24 Q What would be necessary to administer this program
25 with respect to notices?

1 A First off, it would more than double the present
2 requirement of serving a notice to quit, in that an
3 identical letter of some sort would have to be transmitted
4 to every delinquent tenant at an earlier date, through the
5 mails, as I understand it, which is duplication.

6 We do not have the personnel to do this, so we
7 would be required to get additional personnel of some sort --
8 at least temporary personnel -- to do the clerical work.

9 It is our experience that the earlier these actions
10 are taken, the more there would be -- for example, on the
11 second of the month there is no question that virtually
12 every tenant would be given a letter.

13 Q Have you made a computation as to how much it costs
14 the authority just to service the notice requirements?

15 A The mailing cost, the printing cost, the clerical --
16 I would estimate seven to \$10,000 a year.

17 Q In addition to that you testified that there would
18 be \$75,000 net loss -- or does that include the \$10,000?

19 A That includes the \$10,000.

12 THE COURT: At the present time what is the
13 status, if you know, of the summary process matter
14 in the Court of Common Pleas, in the State Court?

15 MR. APTER: Perhaps I better give an answer to
16 that, your Honor.

17 THE COURT: Well, maybe you can state it and
18 counsel can stipulate to it, if you agree.

19 MR. APTER: With respect to the plaintiff,
20 Gwendolyn King, there is a judgment of possession,
21 and an execution has been issued by the Court. At
22 the request of Neighborhood Legal Services, Inc.,
23 I have withheld taking any action.

24 Mrs. King has made some partial payments, and
25 I believe -- I'm not sure whether she's made any

21

1 payments in escrow with Neighborhood Legal Services.

2 But, with respect to the plaintiff, Nellie
3 Avery, notice was served. A summary process writ
4 was issued. Miss Dennis filed a plea in abatement,
5 to which we have filed a demurrer. And it sits at
6 that posture as of the present time.

7 THE COURT: All right. Do counsel agree to
8 that?

9 MS. DENNIS: Yes, your Honor.

10 MR. APTER: I would also agree that I would
11 take no action with respect to Mrs. King or
12 Mrs. Avery, pending a resolution of this matter.

13 THE COURT: Very good. Anything further now
14 that either counsel wants to add?

15 MR. APTER: I have some testimony, if your
16 Honor pleases.

17 MR. MAYOR: The plaintiff has nothing further.
18
19



REGION I
REGIONAL OFFICE
BOSTON, MASSACHUSETTS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AREA OFFICE
ONE FINANCIAL PLAZA
HARTFORD, CONNECTICUT 06103

December 6, 1976

IN REPLY REFER TO:

Morris Apter, Esq.
Apts. Nahum & Lenge
100 Pearl Street
Hartford, CT 06103

1.2G

Dear Mr. Apter:

Subject: Implementation of Model Lease & Grievance Procedure

As discussed during our meeting of November 29, I have considered your proposals regarding implementation of the 14 day notice requirement for non-payment of rent as set forth in 24 CFR 866.4(1). Specifically, you have questioned:

1. Whether the timing of the 14 day notice and the state statutory 5 day Notice to Quit set out at 52 CGS 532 could be such as to expire simultaneously i.e. can the statutory Notice be issued on day 9 of the 14 day period so as to expire on the 14th day and;
2. Whether some form of blanket 14 day notice given at the beginning of the lease term rather than a notice given during the month of default would be permissible.

After consultation with our Regional Counsel in Boston, it is our opinion that the answer to both questions must be no.

1. Issuance of statutory Notice to Quit with end of notice period simultaneous with 14 day notice period.

Under this proposal, the statutory notice per 52 CGS 532 would be issued on day 9 of the 14 day period required by 24 CFR 866.4(1) (2)(i). That section provides:

"(2) That the PHA shall give written notice of termination of the lease of:

(i) 14 days in the case of failure to pay rent."

It is clear under this provision that the lease does not terminate until the expiration of the 14 day period.

Further, 24 CFR 866.58 PHA eviction actions which falls under the rules dealing with grievance procedure provides as follows:

"If a tenant has requested a hearing in accordance with Section 866.55 on a complaint involving a PHA notice of termination of the tenancy and the hearing officer or hearing panel upholds the PHA's action to terminate the tenancy, the PHA shall not commence an eviction action in a State or local court until it has served a notice to vacate on the tenant, and in no event shall the notice to vacate be issued prior to the decision of the hearing officer or the hearing panel having been mailed or delivered to the complainant. Such notice to vacate must be in writing and specify that if the tenant fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against him and he may be required to pay court costs and attorneys fees."

Pursuant to this provision, the PHA could not issue the statutory Notice to Quit until either the 14 day period has expired without a request for hearing or until a hearing decision supporting termination had been mailed or delivered. In the latter case, if the decision of the hearing officer happens to be rendered and mailed or delivered within the 14 day period, the statutory notice could be issued prior to the expiration of the period but the actual vacation date could be no earlier than the later of the end of the 14 day period or the statutory notice period. It is only under this specifically delineated circumstance that the statutory notice could be issued within the 14 day period. In all other cases, the PHA must wait the expiration of the 14 day period to assure that no hearing is requested in order to comply with 866.58.

We note further the numerous decisions in Connecticut under 52 CGS 532 which provide that summary process for non-payment is available only when there is a lease and it has been terminated. See particularly Feneck v. Nowakowski, 146 Conn. 434, 151 A2d 891 (1959). Since, by virtue of 24 CFR 866.4(1) *supra.*, the lease is not terminated for non-payment until either the expiration of the 14 day period or an earlier decision of a hearing officer, an earlier issuance of the statutory notice would presumably be improper under Connecticut law, as having been issued prior to the owner's right to immediate possession.

2. Blanket Notice

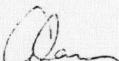
As we understand it, this notice, given to each tenant at the time of lease execution would indicate that if a tenant fails to pay rent by the due date, a breach of the lease will have occurred and he has 14 days from that time to request a hearing and that the lease is terminated at the end of the 14 day period. The pertinent provisions of the regulations are 866.4(1)(2)(i) quoted above and 866.4(1)(3) which provides:

"(3) That the notice of termination to the tenant shall state the reasons for the termination, shall inform the tenant of his right to make such reply as he may wish and of his right to request a hearing in accordance with the PHA's grievance procedure."

Those provisions indicate (1) that the notice is to be issued 14 days prior to termination and (2) that the PHA is to indicate the reasons for termination. The giving of notice at the time of non-payment assures timeliness which would be totally absent in the case of the blanket notice and possibly at odds with contract law concerning anticipatory breach. The requirement relating to stating the reasons for termination is to place the burden on the PHA to determine a breach of covenant running to the PHA. The blanket notice would shift the burden to the tenant to determine when he is in breach of the covenant to pay rent. The shifting of that burden is impermissible and would leave a tenant who, for whatever reason, is unaware of his breach, in the position of having foregone the opportunity for a hearing without knowing of the need to request such a hearing and learning of the alleged breach for the first time by receipt of the statutory notice. Such a system is at odds with the purpose of the regulation in terms of due process and is impermissible.

We trust that this resolves your final questions as to the lease and grievance requirements and that the Hartford Housing Authority will immediately proceed to adopt a lease and grievance procedure in accordance with 24 CFR 866.

Sincerely,


Alan M. Cohen
Area Counsel

1 D A N I E L G. L Y O N S, appearing

2 as a witness, being duly sworn, testified as follows:

3 THE CLERK: Would you state your full name?

4 THE WITNESS: Daniel G. Lyons.

5 THE CLERK: Your address, Mr. Lyons?

6 THE WITNESS: 12 Somerset Street,

7 Wethersfield, Connecticut.

8 DIRECT EXAMINATION BY MS. DENNIS:

9 Q Would you kindly tell the Court what your
10 occupation is?

11 A I'm the Executive Director of the Hartford Housing
12 Authority.

13 Q And will you briefly explain to us what your duties
14 as Executive Director are?

15 A Yes, the Hartford Housing Authority is operated by
16 a Board of five commissioners, who set policy. And I am
17 the chief administrative officer, to make certain that the
18 policies set by those directors are carried out.

19 Q Thank you, Mr. Lyons. Now, through your counsel
20 you have submitted an answer today --

21 THE COURT: Speak good and loud, Counselor,
22 because our stenographer is having trouble hearing
23 you.

24 MS. DENNIS: Yes, your Honor.

25 Q There are a number of facts that I was going to ask

1 you about, so I will be very brief.

2 In the federally subsidized public housing programs
3 that you operate for low income families, would you explain
4 to us how rent is calculated for families in such projects?

5 A Families living in low rent public housing have
6 their rents calculated on the basis of the Brooke Amendment,
7 which basically states that your rent is based on 25 percent
8 of your income, with certain very few allowable deductions.

9 Q So, in other words, you would characterize this
10 as based on ability to pay?

11 A Yes.

12 Q And would you inform us, Mr. Lyons, in the event
13 that a tenant's rent does not pay the cost of operating the
14 unit, where the difference between the rent and the cost of
15 operating the unit comes from?

16 A The tenant's rent never pays the full cost of
17 operating the unit. The cost of operations are borne
18 three ways: the first is what we call debt service; that is,
19 interest on and retirement of the bonds which were floated
20 to defray the costs when these projects were built. That is
21 guaranteed in full, and paid in full by the United States
22 Government.

23 The remaining expenses, the expenses of operating,
24 come from two sources: rents from the tenants, and operating
25 subsidy, which is an operating subsidy as distinguished from

1 debt service, which is made available to us through HUD,
2 the Department of Housing and Urban Development.

3 Q In the City of Hartford would you know of
4 comparable housing for similar rents to those which the
5 Housing Authority is charging?

6 A No.

7 THE COURT: Excuse me, before we leave that,
8 you said three phases. You listed two. Maybe
9 one is broken down in a third.

10 THE WITNESS: The first one, your Honor, was
11 debt service. That is the interest on and retire-
12 ment of the bonds.

13 THE COURT: I have that.

14 THE WITNESS: That comes completely from the
15 Federal Government.

16 Then the operating expenses come from two
17 sources, which with that makes three. The
18 operating expenses come from the rents of the
19 tenants, which is the second and third operating
20 subsidy, by HUD.

21 BY MS. DENNIS:

22 Q Thank you, Mr. Lyons.

23 How many units, how many dwelling units are there
24 under the low income public housing program, approximately?

25 A Approximately about 3100.

1 Q And approximately how many projects are contained
2 in these units?

3 A Nine.

4 Q In 1976 can you provide us with an approximate
5 figure for the vacancy rate in those projects, the overall
6 vacancy rate?

7 A Not from memory, but we have some material with us.

8 Q Okay. Would you be kind enough to get the material
9 in order to give us some idea of the vacancy rate?

10 A We get monthly vacancy reports, and the last one
11 available is for the end of November, November 30th. And as
12 of November 30th in our low rent projects we had 77 vacancies.

13 Q And in terms of the percentage?

14 A It is roughly 2 percent. And that is a fairly
15 common figure for the year. It varies slightly.

16 Q Is there a waiting list?

17 A Yes, there is.

18 Q Of eligible applicants?

19 A Yes.

20 Q Did you bring with you figures concerning your
21 waiting list?

22 A I believe it is available down there. As a red
23 hot guess, I would say about 400, but I could be a little
24 more accurate than that.

25 The eligible applicants in low income, as far as

1 November 30, again, was 1434.

2 Q 1434 for approximately 3,100 units?

3 A Yes.

4 Q And a 2 percent vacancy rate overall?

5 A Yes.

6 Q Given your experience, Mr. Lyons, in terms of the
7 time that the average family spends on a waiting list prior
8 to admission to public housing, can you tell us, for example,
9 in a three bedroom unit, how long a family has to wait?

10 A For three bedrooms it might be anywhere from six
11 months to a year.

12 Q And in the case of a two bedroom unit?

13 A It would probably be a little less, because we have
14 more two bedroom units and more turnover. The higher the
15 number of bedrooms, the less the turnover.

16 Q So in other words, if I were to ask you about a
17 four bedroom unit, that would possibly be more than --

18 A A couple of years, yes.

19 Q If a family were evicted from low rent public
20 housing, for non-payment, and they were to immediately
21 reapply for admission, what would happen?

22 A Well, any family evicted for non-payment of rent
23 is considered a poor rent risk. So they would be placed in
24 the eligible applicant pool, but there would be a considerable
25 wait, because those families who had not previously had the

1 advantage of public housing would have to get their
2 opportunity.

3 Secondly, we would not re-house any family that
4 had moved out of our premises, unless they had paid the
5 amount they owed us.

6 Q Would you characterize their wait as longer than
7 the others?

8 A Oh, very much so.

9 MR. APTER: I wonder if counsel would keep
10 her voice up? I'm having difficulty hearing back
11 here, your Honor.

12 THE COURT: Perhaps if you stood back, beside
13 Mr. Apter.

14 MS. DENNIS: I have just a few more questions,
15 your Honor.

16 BY MS. DENNIS:

17 Q Mr. Lyons, when the Housing Authority commences
18 eviction action against a tenant for non-payment of rent,
19 what happens with the Housing Authority obtains judgment
20 against the client, the tenant?

21 A Well, we don't really go to judgment until we have
22 generally entered into a stipulation, in which we attempt
23 to have them pay more than one month's rent, so that the
24 arrearage is worked off.

25 When we go to judgment it is because we are

1 convinced that the tenant has neither the intention nor
2 perhaps the means to pay us. And after we get judgment --
3 and this is a legal term -- I think we get execution. And
4 then the sheriff arranges to evict the family, with their
5 belongings.

6 Q The stipulation that you mentioned, is there any
7 other stage that tenants that enter into a stipulation with
8 the Housing Authority, paying more than the 25 percent of the
9 net income -- are there additional fees, other than the back
10 rents added on?

11 A There are legal fees. In other words, we serve
12 first a notice to quit. I think the fee for that is
13 probably a \$1.75.

14 Then we get some reprocessed, and then there is a
15 fee for the stipulation, the judgment, and the execution.
16 I cannot tell you those from memory, but they could be
17 obtained.

18 THE COURT: How many tenants do you execute
19 on per year, on the average? In '75-'76, let's say?

20 THE WITNESS: Gee, I don't know. I almost
21 have to defer to counsel, or our comptroller on
22 that.

23 THE COURT: Is it a very unusual circumstance?

24 THE WITNESS: Yes, because we try desperately
25 to work out the collection. Number one, for selfish

1 reasons, because we need the money. And, number
2 two, for humane reasons, because we realize that
3 any tenant evicted from the Housing Authority for
4 non-payment of rent would not be considered a
5 prime tenant by a private landlord, because our
6 rents are generally very reasonable. And failure
7 to pay even the meager rents that we charge would
8 not be much of an inducement to a private landlord.

9 MS. DENNIS: Thank you, Mr. Lyons. I have no
10 further questions.

11 THE COURT: Any questions of this witness,
12 Counsel?

13 MR. APTER: I just want to look at my notes
14 for a minute, your Honor.

15 CROSS EXAMINATION BY MR. APTER:

16 Q The expenses of operation you said came from the
17 rents which are prescribed by Congress, as being 25 percent
18 of the income and the subsidy from the Department of Housing
19 and Urban Development.

20 Tell his Honor whether or not the subsidy that
21 the Authority has received over the past two years is
22 sufficient to operate the Authority within the limit of the
23 necessities that the Authority has, such as maintenance and
24 housekeeping and repairs for deterioration, and so forth.

25 A No, it is grossly inadequate. And that has been

1 directed to the attention of the local area office, and they
2 are powerless to do anything about it, because it is a
3 result of a policy set at a national level. And it has
4 built-in inequities.

5 There is another authority in this state,
6 approximately the same size as ours, which receives one
7 million more in operating subsidies than we do.

8 THE COURT: Why is that?

9 THE WITNESS: They say that is the way the
10 formula works, your Honor. A subsidy is now
11 computed on a performance funding system, which
12 states that the efficiency of a housing authority,
13 regardless of where it is located, can be based
14 on such things as the population, the average
15 bedroom size, the age of the project, and a factor,
16 a wage factor for the area -- or an economic
17 indice, I guess would be the term -- and these are
18 set in Washington.

19 Unfortunately, neither the local area office
20 nor the regional office have anything to say about
21 these. They are set by this performance funding
22 system.

23 At the national conference in New Orleans,
24 which I attended, it was the consensus of opinion
25 that if you had --

1 MR. SWEIGART: Your Honor, at this moment --
2 I am a little bit interested, of course, in hearing
3 what Mr. Lyons has to say, as I am sure you are.
4 But we do have a minimal amount of time to proceed
5 here, and I'm not really sure of the relevance of
6 the performance funding system at this point to
7 the grievance procedures and the eviction of tenants.

8 While I admit it is interesting what might
9 have happened at the conference in New Orleans,
10 I really question whether we are really getting on
11 with where we should be going.

12 Perhaps if your Honor could limit the
13 relevancy to this point?

14 THE COURT: Do you object?

15 MR. SWEIGART: Yes, your Honor.

16 THE COURT: Sustained.

17 MR. APTER: I claim it. Mr. Lyons was asked
18 about the subsidies, and --

19 THE COURT: It is all hearsay, Counselor.
20 As long as you want to bring out that the Housing
21 Authority is laboring under a shortage of
22 finances, that is sufficient.

23 MR. APTER: Very well, your Honor.

24 BY MR. APTER:

25 Q Mr. Lyons, can you tell his Honor whether you are

1 able to meet your operating expenses out of your rent and
2 subsidies?

3 A No.

4 Q How do you make up the difference, if there is any?

5 A We have to dip into a rapidly shrinking operating
6 reserve.

7 Q With respect to your reserve, can you tell his
8 Honor how long they would last at the present rate of
9 expense spending that you have?

10 A Well, at the present time HUD has not told us
11 what subsidy will be available for 1977. But, based on past
12 experience we cannot possibly get through beyond the end of
13 1977.

14 Q What alternative would you have in that case,
15 Mr. Lyons?

16 A Well -- and this is speculation -- I personally
17 feel that the Authority should tell HUD that we can no longer
18 supply decent, safe and sanitary apartments to the people in
19 Hartford, because of the restrictions they impose on us.
20 And I would recommend very strongly to the Commission that
21 they desolve the Authority and return these properties to
22 HUD, to be operated by them.

23 Q Excuse me. What is your immediate alternative?

24 The immediate alternative, pending that, would be
25 layoffs of maintenance crews and clerical staff, from an

1 existing staff which the local area office has already told
2 us is undersized.

3 Q In your opinion would there be a loss of services
4 to the tenants if that comes about?

5 A It would be a loss of services, plus possibly --

6 MS. DENNIS: Your Honor --

7 A -- that we might not be able to meet our utility
8 bills.

9 MR. APTER: Just a moment. There is an
10 objection.

11 MS. DENNIS: I do not see the relevancy of
12 this line of questioning, your Honor.

13 MR. APTER: It is very pertinent to the whole
14 inquiry, if your Honor please.

15 THE COURT: Isn't it, isn't the real question
16 here whether or not the regulations are consistent
17 with legislative authority by Congress? And if it
18 isn't, then it is invalid. If it is consistent,
19 then it is valid, provided it doesn't violate any
20 constitutional provisions.

21 MR. APTER: Yes, your Honor, except that the
22 focus on whether the mandate of Congress, with
23 respect to prompt payment is definitely tied to the
24 conditions that the witness is describing.

25 Prompt payment means they will be able to do

1 things with money that they receive promptly by
2 way of taking care of their expenses.

3 And the witness is now describing the present
4 condition.

5 THE COURT: Well, I think we have covered
6 that phase of it. You are short of money and you
7 need money. And the question is whether or not
8 this regulation is valid.

9 MR. APTER: That's all, Mr. Lyons. I have no
10 further questions.

11 MR. SWEIGART: I have no questions, your Honor.

12 THE COURT: Thank you. Any other witnesses?

13 MS. DENNIS: I would like to ask Mr. Lyons
14 one final question, which I forgot the first time
15 around.

16 REDIRECT EXAMINATION BY MS. DENNIS:

17 Q Mr. Lyons, we are here primarily concerning two
18 of your tenants, Gwendolyn King, from Bellevue Square, and
19 Nellie Avery from Dutch Point.

20 With the records that you brought with you today
21 can you tell the Court what is the size of the apartment that
22 each of these tenants occupy?

23 A I think that material would be contained in the
24 tenant's folder, which has the lease, which I think counsel has.

25 Gwendolyn King occupies a one bedroom unit -- a

1 three room apartment. And Mrs. Avery occupies a three
2 bedroom unit, which is a five room apartment.

3 Q Okay. You testified previously on how long the
4 wait would be in the event that a tenant from a three
5 bedroom apartment who was evicted would wait. What about,
6 for example, a tenant who was in Mrs. King's position, in a
7 one bedroom apartment; can you give us an idea how long a
8 tenant would have to wait to reapply for a one bedroom
9 apartment?

10 A Well, you have to understand --

11 Q To be readmitted, I should say.

12 A We permit our applicants to select their units.
13 So the one bedroom unit that Mrs. King would vacate, in
14 Bellevue Square, it depends on whether the elderly person
15 would want to wait for Smith Towers, or Betty Knox.

16 That is a difficult question to answer. But if
17 their housing need was desperate, we could almost rent it
18 overnight. We have one bedroom vacancies, not designed
19 specifically for the elderly, that we have difficulty in
20 renting. Sometimes they are vacant for years.

21 MS. DENNIS: I see. Thank you very much,
22 Mr. Lyons. I have no further questions.

23 THE COURT: Mr. Lyons, do you have the
24 responsibility of sending out any notices that are
25 required by the regulations of HUD to prospective

1 tenants, for tenants who are prospectively to be
2 evicted?

3 THE WITNESS: Yes, we do have that, your Honor.

4 THE COURT: Is that under your jurisdiction?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: In the case of Gwendolyn King and
7 in the case of Nellie Avery, is there a summary
8 process eviction proceeding now pending concerning
9 either or both of them?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: Prior to the commencement of the
12 summary process action in the state court, did your
13 office give notice in accordance with the
14 regulations prescribed by HUD to either or both of
15 these two plaintiffs?

16 THE WITNESS: We did not give them, your Honor,
17 a 14 day notice. Our present policy is to serve a
18 notice to quit anywhere from the 14th to the 18th
19 of the month.

20 MS. DENNIS: Your Honor --

21 THE COURT: And that is under state law?

22 MR. APTER: Yes, your Honor.

23 THE COURT: And the administrative regulations
24 that prescribe a 14 day notice prior to the
25 commencement of the state law eviction process was

1 never done?

2 THE WITNESS: No, your Honor.

3 THE COURT: Do you know why it wasn't done?

4 THE WITNESS: Yes, your Honor, because we
5 didn't feel that the regulations have the right to
6 subvert the will of Congress.

7 In HUD's own regulations, which they
8 prescribe for this 14 day notice, they state it is
9 because Congress is interested in prompt payment
10 of rents. There are authorities in this country
11 who do not commence eviction process until a tenant
12 in some instances owes as much as one and maybe
13 two months' rent.

14 And it is our belief that our present system,
15 which has received the commendation of the local
16 area office, effects a very good collection policy.
17 And it was our belief that we could reason with the
18 area office and convince them that to implement
19 what they wanted us to do would in essence delay
20 our rent collection policy.

21 THE COURT: And you tried that, and failed?

22 THE WITNESS: We tried and failed.

23 THE COURT: Now you are here in court?

24 THE WITNESS: That's right, your Honor.

25 THE COURT: Is there a policy which has been

1 considered and approved by the Housing Authority
2 of the City of Hartford, through its commissioners?

3 THE WITNESS: Yes, your Honor. And not only
4 that, in prior reviews by various branches of HUD
5 we have been commended for our collection policy.

6 THE COURT: You have never been commended for
7 violating the regulation?

8 THE WITNESS: No, your Honor.

9 THE COURT: All right, thank you.

10 (Witness excused.)